NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
CUMBERLAND COUNTY	95 CVS 3380
HOMER W. WALKER and REGINALD HUDSON, *Plaintiffs,* vs. NATIONSBANK, JOE TEMPLE, C. KIM NAZARCHYK, AND FAYE MCDANIEL, *Defendants.*	ORDER

THIS MATTER coming on to be heard and being heard before the undersigned Judge Presiding at the May 20, 1996 Civil Session of Cumberland County Superior Court and it appearing to the Court that when this matter came on for trial that the defendants were present and prepared for the trial, including having witnesses subpoenaed and in all other respects being prepared to defend themselves in this action; it further appearing that the plaintiff, Homer W. Walker, was unavailable for trial, having been refused release from the federal prison system by the federal authorities for the purpose of prosecuting this civil action; it further appearing to the Court that the defendants, through counsel, moved for involuntary dismissal of this action, without prejudice, pursuant to Rule 41 (b), because of the plaintiff's unavailability for trial and the continuing unfairness and

prejudice to the defendants awaiting the uncertainty of trial at a future date; and the Court being of the opinion that the Motion should be allowed and that this matter should be involuntarily dismissed, without prejudice, however, for the plaintiff, Homer W. Walker, to refile this action, if he chooses to do so, in such a way that he can time his availability for appearance in Court;

NOW, THEREFORE, IT IS ORDERED ADJUDGED AND DECREED that this action be and is hereby dismissed, pursuant to the provisions of N.C.G.S. 1A-1, Rule 41 (b), but without prejudice to the right of the plaintiff, Homer W. Walker, to refile this action as he may deem fit. This dismissal is also without prejudice to the right of the defendants to assert all defenses available to them in the event that the action is refiled by the plaintiff Walker.

This the 23 day of May, 1996.

/S/ Jack Thompson
Judge Presiding

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:96-CV-1034-BR (1)

HOMER WALKER,	)	
	)	
Plaintiff	)	
	)	
V.	)	ORDER
	)	
NATIONSBANK, et al.,	)	
	)	
Defendants	)	

This matter is before the Court on the following motions:

1. By defendants to dismiss.

2. By defendants to stay discovery.

3. By plaintiff to amend.

The motions have been fully briefed and are ripe for ruling. Upon full consideration, the motion by plaintiff to amend is DENIED, the motion by defendants to dismiss is ALLOWED, and the motion by defendants to stay discovery is rendered moot. This action is DISMISSED.

This April 29, 1997.

/S/ W. Earl Britt
W. Earl Britt
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No 5:97-CV-450-BO (2)

HOMER WALKER.	)	
Plaintiff	)	
V.	)	
	)	**ORDER**
NATIONSBANK, JOE TEMPLE,	)	
C. KIM NAZARCHYK, and	)	
FAYE MCDANIEL.	)	
Defendants	)	

This matter is before the Court on plaintiff's Motion to Remand and defendant's Motion to Dismiss. Plaintiff's action now before this Court asserts the same claims based on identical facts and circumstances as were previously dismissed on defendant's motion by U.S. District Judge W. Earl Britt in Civil Action No. 5:96-CV-1034-BR (1). Because Judge Britt's April 29, 1997 Order did not otherwise specify the nature of the dismissal, this Court presumes the dismissal to have been with prejudice, operating as a adjudication upon the merits pursuant to Rule 41 (b) of the Federal Rules of Civil Procedure. Plaintiff is barred from relitigating this action. Accordingly, defendant's motion is GRANTED and plaintiff's motion is MOOT.

SO ORDERED.

This 19th day of December, 1997.

/S/ Terrence W. Boyle
Terrence W. Boyle
Chief United States District Court Judge

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:97-CV-450-BO (2)

HOMER WALKER,	)	
	)	
Plaintiff	)	
	)	
V.	)	ORDER
	)	
NATIONSBANK, et al.,	)	
	)	
Defendants	)	
	)	

This matter is before the Court on Plaintiff's Motion for Relief from this Court's Order of December 22, 1997 pursuant to Rule 60 (b) of the Federal Rules of Civil Procedure. In their response, Defendants request the Court to consider sanctions as necessary to halt any abuse in this matter. The underling case was the third in a series of virtually identical lawsuits filed against Defendants. These lawsuits allege "racial discrimination," "false arrest and detention," "cruel and unusual punishment," "deliberate indifference," "deprivation of character," "unfair trade practices," and other supposed wrongdoing. After this Court's order of December 22, 1997, stating that "Plaintiff is barred from relitigating this action," Plaintiff filed a fourth identical lawsuit in Cumberland County, North Carolina. That lawsuit was removed to this Court, and was dismissed based on the doctrine of *res judicata* on April 3, 1998. It appears that two additional

APPENDIX D

identical lawsuits have been filed in Cumberland County, North Carolina, for a total of six identical lawsuits.[1] The Fourth Circuit has dismissed an appeal from Walker on this matter. Plaintiff has also filed a Rule 11 Motion for sanctions against counsel for the Defendants, which was denied by U.S. District Court Judge James C. Fox on September 15, 1998.

A Rule 60 (b) Motion for Relief may be granted in instances of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, or any other reason justifying relief from the operation of the judgment. No such reason is present in this case. Therefore, after full consideration, Plaintiff's Motion for Relief pursuant to Rule 60 (b) is DENIED. In essence, Plaintiff is attempting to litigate this issue for a seventh time. While Plaintiff is entitled to some liberality as a pro se litigant, abuse of the judicial system need not be tolerated.

Because of Plaintiff's abuse in this matter, this Court will impose sanctions on Plaintiff. Federal Rule of Civil Procedure 11 allows this Court to impose sanctions on an attorney or unrepresented party when that party or attorney submits a filing to the Court for "any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation." Therefore, the Plaintiff is hereby ORDERED to show cause why Plaintiff should not be ordered to pay a penalty of $1,000 to the Court. Plaintiff shall make any such showing by written filing no later than

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[1]In the sixth lawsuit, Judge William C. Gore, Jr. Of the Cumberland County, North Carolina, Superior Court, ordered Plaintiff to pay Defendant's attorneys' fees and costs, along with barring Plaintiff from filing further complaints against Defendants until these sanctions were paid and other conditions met.

APPENDIX D

December 21, 1998. The Clerk of this Court is directed not to accept any filings from the Plaintiff other than one showing cause why sanctions should not be imposed until such time as Plaintiff has complied with this Court's sanction, and to bring any accepted filings to the attention of the undersigned Judge.

SO ORDERED.

This 26th day of November, 1998.

/S/ Terrence W. Boyle
Terrence W. Boyle
Chief United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:97-CV-450-BO (2)

HOMER WALKER,	)	
	)	
Plaintiff	)	
	)	
V.	)	ORDER
	)	
NATIONSBANK, et al.,	)	
	)	
Defendants	)	
	)	

This matter is before this Court on Plaintiff's "Motion to Show Cause Why Sanctions Should Not Be Imposed on Plaintiff" and seeking reconsideration of the Court's order of December 1, 1998, which denied Plaintiff's Motion for Relief pursuant to Rule 60 (b). In the same December 1 order, Plaintiff was instructed to show cause why sanctions, including a $1,000.00 penalty, should not be imposed on Plaintiff.

Plaintiff has a long history of abusive litigation tactics against Defendants, as outlined in this Court's December 1 order. Nonetheless, Plaintiff submits that his "Rule 60 (b) motion was not filed with the intent to harass or to cause unnecessary delay or needless increase in cost or any other improper purpose." This Court disagrees, but, in an excess of caution and liberality, will not impose a financial sanction on Plaintiff at this time.

However, this Court will impose a non-financial

APPENDIX E

sanction designed to protect the Court and opposing parties from further abusive litigation by Plaintiff. Plaintiff's abusive litigation tactics have severely burdened Defendants, who have incurred significant legal fees. In order to prevent further abuse of the judicial system, Plaintiff will be placed under a pre-filing injunction requiring him to obtain leave of court before filing further civil actions. To be considered by this Court, any such filing must include a statement, under penalty of contempt, certifying that the claim(s) raised in the filing have never been raised or disposed of on the merits by any state or federal court. See McMahon v. F & M Bank – Winchester, 45 F.3d 426 (4th Cir. 1994).[1]

The part of the Plaintiff's filing that seeks reconsideration of Plaintiff's Rule 60 (b) motion is DENIED. Plaintiff Homer W. Walker is hereby permanently ENJOINED from filing, commencing, or attempting to initiate any new lawsuit, action, proceeding, or matter in this Federal District Court without first obtaining leave of this Court to so proceed, as described above. The Clerk of this Court will take such actions as are necessary to implement the pre-filing injunction described above.

SO ORDERED.

This 10th day of January, 1999.

/S/ Terrence W. Boyle
Terrence W. Boyle
Chief United States District Court Judge

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[1]This is an unpublished decision of the Fourth Circuit, and is cited by this Court only for the legal proposition that it is proper for a District Court to protect itself and parties from harassing and vexatious suits through the use of pre-filing injunctions.

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:96-CV-450-BO (2)

HOMER WALKER.
Plaintiff

V.

NATIONSBANK. et al..
Defendants

ORDER

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED. ADJUDGED. AND DECREED that Plaintiff's filing seeking reconsideration of Plaintiff's Rule 60(b) Motion is DENIED. Plaintiff is hereby permanently ENJOINED from filing. commencing. or attempting to initiate any new lawsuit. action. or proceeding. or matter in this Federal District Court without first obtaining leave of this Court to so proceed. (BOYLE. J)

THIS JUDGMENT FILED AND ENTERED ON JANUARY 13. 1999 AND COPIES TO:

Homer Walker
P.O. Box 133
Fayetteville. NC 28302-0133

Benjamin Davis. Jr.. Esq.
P.O. Box 21927
Greensboro. NC 27420

January 13. 1999 DAVID W. DANIEL. CLERK

/S/ Sue A. Towe
(By) Deputy Clerk

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Case No. 99-1308
District Court Docket No. 5:97-CV-450-BO (2)

HOMER WALKER.	)	
	)	
Petitioner	)	
	)	
V.	)	**MOTION FOR MANDAMUS**
	)	
NATIONSBANK.	)	
JOE TEMPLE. C. KIM	)	**PURSUANT TO**
NAZARCHYK. AND	)	**28 USC § 1361**
FAYE McDANIEL.	)	
Respondents	)	
	)	

INTRODUCTION

Now comes petitioner Homer W. Walker, and respectfully move this honorable court to issue and order pursuant to 28 USC § 1361 to compel the honorable Terrence W. Boyle, who is a United States judge in the Eastern District of North Carolina to perform his duty.

JURISDICTION AND VENUE

Accordingly the honorable Terrence W. Boyle is a United States judge in the Eastern District of North Carolina. Pursuant to 28 USC § 1361, venue regarding this matter is proper in this court.

APPENDIX G

STATEMENT OF FACTS

1. On May 6. 1997. pursuant to the order of the honorable Jack A. Thompson. petitioner refiled his state law civil action against respondents in Cumberland County Superior Court. Fayetteville. North Carolina.

2. On June 4. 1997. respondents removed petitioner's state law claim to federal court.

3. On July 1. 1997. petitioner filed motion to remand his state court action back to state court.

4. On July 8. 1997. respondents filed motion to dismiss and motion for anti-suit injunction.

5. On December 19. 1997. the District Court entered an order rendering petitioner's motion to remand moot. dismissed petitioner's claim from federal court. and barred petitioner from relitigating his state court action in state or federal court.

6. On September 15. 1998. petitioner filed motion pursuant to Rule 60 of the Federal Rules of Civil Procedure to set aside the order and judgment entered on December 19. 1997. together with supporting memorandum of law requesting that the District Court remand petitioner's state court action back to state court.

7. On November 26. 1998. the court entered an order denying petitioner's Rule 60 motion. and ordered the petitioner to show cause as to why the court should not order petitioner to pay a penalty of $1.000.00 to the court for filing

the Rule 60 motion and directed the Clerk of Court not to accept any filings from petitioner other than one showing cause why sanctions should not be imposed on petitioner.

8. On December 4, 1998, in keeping with the order of the court, petitioner filed Motion to Show Cause and requesting that the court reconsider its order denying petitioner's Rule 60 motion.

9. On January 10, 1999, the court entered its order in the Show Cause motion. In the January 10, 1999 order, the court imposed a non-financial sanction on petitioner and placed petitioner under a pre-filing injunction, and permanently enjoined petitioner from filing, commencing, or attempting to initiate any new lawsuit, action, proceeding, or matter in that federal court and directed the Clerk of Court to take such actions as are necessary to implement the pre-filing injunction.

DUTY OWED PETITIONER IS AS SUCH:

Refusal to act in accordance with Rule 60 of the federal Rules of Civil Procedure. . .refusal to act in accordance with Rule 12 (h(\) of the federal Rules of Civil Procedure. . .duty owed to petitioner is as such.

1. Set aside the court's order dated December 19,1997, rendering petitioner's Motion to Remand moot and barring petitioner from relitigating his state court action.

2. Remand petitioner's state court action back to Cumberland County Superior Court, Fayetteville, North Carolina, which would assure petitioner his day in court, which petitioner has repeatedly been denied by the United States District Court.

3. To strict the District Court's order dated January 10, 1999 which placed petitioner under a pre-filing injunction and permanently enjoined petitioner from filing, commencing, or attempting to initiate any new lawsuit, action, proceeding, or matter in federal court.

Petitioner has attached hereto petitioner's memorandum of law in support of this motion for mandamus and supporting appendix.

March 4, 1999

Homer W. Walker / Pro Se
P.O. Box 133
Fayetteville, NC 28302
(910) 868-2500

CERTIFICATE OF SERVICE

This is to certify that the undersigned deposited a copy of the foregoing in the United States mail, First Class postage paid and properly addressed to:

Benjamin Davis, Jr.
Counsel for Respondents
P.O. Box 21927
Greensboro, NC 27420

this 4 day of March, 1999.

Homer W. Walker
P.O. Box 133
Fayetteville, NC 28302
(910) 868-2500

APPENDIX – G

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

COA Case No. 99-1308

District Court Docket No. 5:97-CV-450-BO (2)

HOMER W. WALKER,)
Petitioner)
V.)
)
NATIONSBANK, JOE TEMPLE,)
C. KIM NAZARCHYK, AND)
FAYE McDANIEL,)
Respondents.)
)

CERTIFICATE OF SERVICE

This is to certify that on this 12th day of March 1999, the undersigned deposited a true copy of petitioner's memorandum of law in support of motion for mandamus in the United States mail, First Class postage paid and properly addressed to:

Hon: Terrence W. Boyle
P.O. Box 429
Elizabeth City, NC 27907-0429

David Daniel
Clerk of U.S. District Court
P.O. Box 25670
Raleigh, NC 27611

APPENDIX – G

Benjamin F. Davis. Jr.
Counsel for Defendants/Respondents
P.O. Box 21927
Greensboro. NC 27420

Homer W. Walker
P.O. Box 133
Fayetteville. NC 2830
(910) 868-2500

APPENDIX – G

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-1308

In re: HOMER W. WALKER,

Petitioner.

On Petition for a Writ of Mandamus. (CA-95-450-5-BO)

Submitted: May 25, 1999 Decided: June 1, 1999

Before ERVIN, WILKINS, and MICHAEL, Circuit Judges.

Petition denied by unpublished per curiam opinion.

HOMER W. WALKER, Petitioner Pro Sé.

Unpublished opinion are not binding precedent
in this circuit. See Local Rule 36 (c).

APPENDIX – H

PER CURIAM:

Homer W. Walker has filed a petition for a writ of mandamus seeking an order to set aside a pre-filing injunction entered by the district court. Mandamus is a drastic remedy to be used only in extraordinary circumstances. See Kerr v. United States District Court, 426 U.S. 394, 402 (1976). Mandamus relief is only available when there are no other means by which the relief sought could be granted. see In re Beard, 811 F.2d 818.826 (4th Cir. 1987). and may not be used as a substitute for appeal. See In re United Steelworkers, 595 F.2d 958, 960 (4th Circuit 1979). The party seeking mandamus relief carries the heavy burden of showing the he has "no other adequate means to attain the relief he desires" and that his right to such relief is "clear and indisputable." Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980). Walker has not made such a showing. Accordingly, we deny mandamus relief. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid in the decisional process.

PETITION DENIED

APPENDIX – H